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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,611	10/14/2003	Frank E. Semersky	1-36691	2924
4859	7590	12/01/2005	EXAMINER	
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			VO, HAI	
		ART UNIT		PAPER NUMBER
		1771		

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/684,611	SEMERSKY, FRANK E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hai Vo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 03 October 2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

1. The 112 claim rejections are maintained.
2. All of the art rejections are maintained.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention substantially as set forth in the 03/31/2005 Office Action. Applicant did not distinctly and specifically point out the supposed errors in the 112 claim rejections, the rejections are thus maintained.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-2, 5, 8-13, 16-19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Park et al (US 5,149,579) substantially as set forth in the 03/31/2005 Office Action.
7. Claims 1-11, 22, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Hayes et al (US 6,485,819) substantially as set forth in the 03/31/2005 Office Action.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
9. Claims 3, 4, 6, 7, 14, 15, 20, 21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park et al (US 5,149,579) as applied to claim 1 above, further in view of Hayes et al (US 6,485,819) substantially as set forth in the 03/31/2005 Office Action.
10. Claims 12-17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes et al (US 6,485,819) as applied to claim 1 above, further in view of Park et al (US 5,149,579) substantially as set forth in the 03/31/2005 Office Action.
11. Claims 18-21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes et al (US 6,485,819) as applied to claim 1 above, further in view of

Haase et al (US 5,149,579) substantially as set forth in the 03/31/2005 Office Action.

12. Claims 1- 11, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kocher et al (US 5,919,547) further in view of Hayes et al (US 6,485,819) substantially as set forth in the 03/31/2005 Office Action.

***Response to Arguments***

13. All of the art rejections have been maintained for the following reasons.

Applicant argues that none of the cited references teaches or suggests the foam cells containing carbon dioxide. The examiner disagrees. It appears that the foam layer as disclosed by Park or Hayes is formed by using carbon dioxide as a blowing agent as the second layer of the present invention. It is not understood why the foam cells could not have contained carbon dioxide as the same blowing agent is employed, i.e., injecting carbon dioxide as a foaming agent into the polymer through the extruder shaping die. It is agreed that Parks uses carbon dioxide for controlling the density of the foam. However, such use does not preclude the foam cells from containing carbon dioxide. Park discloses the foam sheet is "aged for a period time to allow for diffusion of the blowing agent and air through the cell walls *to bring it to equilibrium*". This indication suggests that some of the carbon dioxide still remains in foam cells after the period time of aging. Since the claims are completely silent as to the amount of carbon dioxide present in the foam cells and the foam cells of the present invention is formed by the same process as those disclosed in the prior art, the examiner maintains that

carbon dioxide would be substantially inherently present in the foam cells.

Accordingly, the art rejections are sustained.

***Conclusion***

**14. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**15.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hai V.

HV

**HAI VO**  
**PRIMARY EXAMINER**